

Insurance as a nongovernmental plan for unemployment or sickness insurance.

**§323.4 Guidelines for content of a nongovernmental plan.**

At a minimum, a nongovernmental plan for unemployment or sickness insurance should contain the following features:

- (a) The title of the plan (e.g., Supplemental Unemployment Benefit Plan or Supplemental Sickness Benefit Plan);
- (b) A statement of purpose, such as the following:

There is hereby established a nongovernmental plan for (unemployment insurance) (sickness insurance) [specify which one] within the meaning of section 1(j) of the Railroad Unemployment Insurance Act. The purpose of this plan is to supplement the benefits that an eligible employee may receive under that Act and not to replace or duplicate such benefits. Payments under this plan are designed as one of the benefits of employment with [name of employer] and are not intended as pay for time lost or any other form of remuneration for services rendered as an employee;

- (c) A statement as to which class or craft of employees, or other specified group of employees, is covered by the plan;

- (d) The criteria governing a particular covered employee's eligibility for supplemental benefits under the plan;

- (e) The dollar amount of supplemental benefits payable on a periodic basis to an eligible employee, the duration of supplemental benefits, how such benefits will be computed, and the conditions under which an employee will be disqualified or benefit payments reduced or terminated; and

- (f) The identity of the plan administrator and the procedure by which a covered employee may claim supplemental benefits under the plan, including forms to be filed (if any), how to file, the time limit for filing, and how an employee may appeal from a denial of supplemental benefits.

**§323.5 Submitting proposed plan for Board approval.**

An employer shall submit each proposed plan, or a proposed revision to an

existing plan, to the Director of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. The Director shall determine whether the plan or revision conforms to this part. Approval shall be effective as of the effective date of the plan. If not approved, the Director will advise the employer in which particular respects the proposed plan or revision does not conform to this part.

**§323.6 Treatment of benefit payments under a nongovernmental plan for purposes of contributions.**

Benefit payments under nongovernmental plans approved by the Board under this part are not *compensation* as defined in section 1(i) of the Railroad Unemployment Insurance Act, and therefore they are not subject to contribution under part 345 of this chapter.

**§323.7 Effective date.**

- (a) This part shall not apply to a plan approved by the Director of Unemployment and Sickness Insurance prior to the effective date of this part. However, it shall apply to any proposed revision to such plan.

- (b) Any plan in effect on the effective date of this part that has not been approved by the Director of Unemployment and Sickness Insurance shall be considered a proposed plan for purposes of §323.5.

**PART 325—REGISTRATION FOR RAILROAD UNEMPLOYMENT BENEFITS**

Sec.

325.1 General.

325.2 Procedure for registering for unemployment benefits.

325.3 Application for unemployment benefits and employment service.

325.4 Claim for unemployment benefits.

325.5 Death of employee.

325.6 Verification procedures.

AUTHORITY: 45 U.S.C. 362(i) and 362(l).

SOURCE: 54 FR 24551, June 8, 1989, unless otherwise noted.

**§ 325.1 General.**

(a) *Statutory basis.* The Railroad Unemployment Insurance Act (Act) provides for the payment of unemployment benefits to qualified railroad employees for days of unemployment. The term “day of unemployment” is defined in section 1(k) of the Act. Section 12(i) of the Act authorizes and requires the Board to establish a procedure by which unemployed employees may register for unemployment benefits for days on which they are unemployed, able to work, and available for work and to pay benefits when such employees have complied with the Board’s procedures.

(b) *Day of unemployment.* The amount of unemployment benefits payable to a qualified employee will be computed in accordance with section 2(a) of the Act. Under that section, benefits are payable to a qualified employee for each day of unemployment over four in each registration period, generally a period of 14 consecutive days, in a benefit year except that no benefits are payable for any day of unemployment during the employee’s waiting period in each benefit year.

(c) *Registration period.* Except for registration periods in extended unemployment benefit periods, a “registration period” means a period of 14 consecutive days beginning with the first day for which an employee registers following:

- (1) His or her last day of work, or
- (2) The last day of the employee’s last preceding registration period, and with respect to which the employee properly files a claim for benefits on such form and in such manner as the Board prescribes.

With respect to an extended benefit period, each of the successive 14-day periods in the extended unemployment benefit period is a registration period.

(d) *Waiting period.* An employee’s first registration period in any benefit year is his or her waiting period, provided that such employee has at least five days of unemployment in such registration period and has complied with the requirements of this part. When the Board finds that an employee’s unemployment is due to a stoppage of work because of a strike in the establishment, premises, or enterprise at

which he was last employed, no benefits are payable for the first 14 days of unemployment due to such stoppage of work. For subsequent days of unemployment due to such stoppage of work, benefits shall be payable for days of unemployment in excess of four during any registration period within the same benefit year.

(e) *Pay for time lost.* An employee may claim unemployment benefits in accordance with this part even though he or she is also pursuing a claim for pay for time lost or other remuneration. If such pay is awarded to the employee with respect to any day for which the Board has paid him or her unemployment benefits, the Board will recover the amount of unemployment benefits that was paid for any day or days for which he or she was awarded pay for time lost. See part 322 of this chapter. It is the employee’s responsibility to tell the Board that he or she has filed or intends to file a claim for time lost.

**§ 325.2 Procedure for registering for unemployment benefits.**

(a) *Registering as unemployed.* To claim unemployment benefits for any day, an employee must register as unemployed by doing the following:

- (1) Apply for unemployment benefits and employment service in accordance with § 325.3;
- (2) File a claim in accordance with § 325.4; and
- (3) Provide any other information that the Board needs to properly adjudicate his or her right to unemployment benefits.

(b) *No benefits payable without registration.* No unemployment benefits shall be paid to any otherwise qualified employee with respect to any day claimed as a day of unemployment, and no waiting period credit shall be allowed, until such time as the employee has complied with the requirements of paragraph (a) of this section.

(c) *When a registration period may begin.* When registering for unemployment benefits, an employee may claim benefits for any calendar day on which he or she is unemployed and believes himself or herself to be eligible for benefits. A registration period may begin as early as the first calendar day on

which an employee is unemployed following his or her last day of work even though such first calendar day would have been a rest day if the employee had not become unemployed. However, a registration period may not begin with any calendar day with respect to which an employee has received or will receive remuneration.

*Example 1.* An employee whose rest days are Saturday and Sunday is laid off on Friday, September 2, after working his regular shift on that day. His first 14-day registration period could start as early as Saturday, September 3. A registration period starting on September 3 would end on September 16. If he continues to be unemployed, his next registration period could begin September 17 and end September 30, and so forth.

*Example 2.* An employee whose rest days are Saturday and Sunday is laid off on Friday, September 2, but he decides to take two weeks' vacation pay covering days through Friday, September 16. Because he will have received remuneration for days through September 16, his claim for unemployment benefits could begin on Saturday, September 17, if he continues to be unemployed after his vacation ends.

*Example 3.* An employee whose rest days are Saturday and Sunday is laid off on Monday, September 5, after working his regular shift on that day. His first 14-day registration period could begin on Tuesday, September 6, the first day on which he was unemployed following his last day of work.

(Approved by the Office of Management and Budget under control number 3220-0166)

### § 325.3 Application for unemployment benefits and employment service.

(a) *Requirement.* An unemployed employee who wishes to claim unemployment benefits shall apply for such benefits by completing the form prescribed by the Board for that purpose. Such form shall also constitute an application for employment service. An application will be required at the beginning of each period of unemployment in a benefit year unless:

(1) The employee filed an application for an initial period of unemployment in a benefit year and has a subsequent period of unemployment within the same benefit year; or

(2) The employee had filed an application for benefits for a period of unemployment that began in the preceding benefit year and the period of

unemployment continued into the next ensuing benefit year.

In either of these circumstances, the initial application will be treated as an application for days in the subsequent period of unemployment or as an application for days in the next ensuing benefit year, as the case may be.

(b) *Purpose of application.* An application for unemployment benefits and employment service is a document that serves three purposes. First, it identifies an employee who has become unemployed and wishes to begin receiving unemployment benefits. Second, it assists the Board in determining whether the applicant is a qualified employee and if so, whether any of the information reported on the application affects his or her eligibility for payment of benefits. Third, it assists the Board in placing the employee in any suitable employment that may be available.

(c) *Time for filing application.* An employee may deliver or mail his or her application to any Board office, but such application must be received at a Board office within 30 calendar days of the first day that the employee intends to claim as a day of unemployment. For example, if an employee becomes unemployed on October 31 and intends to claim unemployment benefits for days starting November 1, the application must reach a Board office no later than November 30. If the application is received December 1, the employee may not be paid unemployment benefits for November 1 as such day would not be considered as a "day of unemployment". If an employee returns to work and then becomes unemployed again within the same benefit year, he or she is not required to file a new application for benefits and employment service but need only contact the nearest Board office to obtain a claim form and file such form as described in § 325.4.

(d) *Extension of time for filing.* Notwithstanding paragraph (c) of this section, the Board will consider an application for unemployment benefits as timely filed if:

(1) The employee can show that he or she made a reasonable effort to file the form on time but was prevented from doing so by circumstances beyond his or her control; provided, however, that

lack of diligence, forgetfulness or lack of knowledge of the time limit for applying shall not be considered to be a circumstance beyond the employee's control; and

(2) The employee files an application within one year of the day or days that he or she claims as a day or days of unemployment.

**§ 325.4 Claim for unemployment benefits.**

(a) *Requirement.* After an unemployed employee has applied for unemployment benefits in accordance with § 325.3, he or she shall claim a day as a day of unemployment by registering with respect to such day. Registration shall be made on the claim form provided by the Board to the employee.

(b) *Claim.* A claim for unemployment benefits shall cover a period of 14 consecutive calendar days. Each such 14-day period shall be a registration period. An employee shall provide the information called for by the claim form and shall file his or her claim in accordance with paragraph (c) of this section.

(c) *Time for filing.* A claim for unemployment benefits shall be filed at any Board office no later than 15 calendar days after the last day of the claim period, as defined in paragraph (b) of this section, or 15 calendar days after the date on which the claim form was mailed to the employee, whichever is later. In determining whether the time for filing the claim may be extended, the standards set forth in § 325.3(d) shall be applied. None of the days included in a claim that is not timely filed shall be considered a day of unemployment.

(d) *Claim for new period of unemployment.* An employee who has complied with the application requirement under § 325.3 with respect to a period of unemployment in a benefit year, and who again becomes unemployed in the same benefit year, need not file a new application but may initiate a claim for benefits for days in such subsequent period by calling or visiting the nearest district office of the Board to request a claim form. Such request shall be made no later than 30 calendar days after the first day for which the employee wishes to claim benefits. Upon receipt of a re-

quest under this paragraph, the district office shall provide the employee with a claim form which shall show the beginning and ending dates of the registration period covered by the claim form, with the first day shown on the claim form being no earlier than the 30th day before the date on which the employee requested the claim form, unless the delay may be excused by applying the standards set forth in § 325.3(d).

(e) *Delayed claims.* If an employee makes an initial application and claim for benefits in accordance with this part but does not continue to file ongoing claims because he or she receives an initial determination denying his or her application or claim for benefits and if, upon review, the denial is reversed by an appeals referee or other authorized reviewing official, the employee shall have 30 days from the date of the notice of the reversal in which to file a claim or claims for benefits for the days that he or she would have claimed as days of unemployment but for the initial determination denying benefits. The appeals referee or other reviewing official, as appropriate, shall notify the employee of the 30-day time limit imposed by this paragraph. An employee whose claim for benefits has been denied may continue to claim any additional day or days for which he or she believes that he or she is eligible for benefits.

(f) *Claim required for waiting period.* The requirement to file a claim for unemployment benefits includes a requirement to file a claim for the non-compensable waiting period described in § 325.1(d), except that the Director of Unemployment and Sickness Insurance may waive such requirement in connection with unemployment resulting from a work stoppage or other labor dispute.

(g) *Withdrawal of claim.* An employee may withdraw his or her claim for unemployment benefits by submitting a written statement to that effect and by repaying any benefits paid on the claim, unless the employee's claim was intentionally false or fraudulent.

[54 FR 24551, June 8, 1989, as amended at 58 FR 45841, Aug. 31, 1993]

**§ 325.5 Death of employee.**

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of the person or persons to whom benefits would be payable pursuant to section 2(g) of the Act. Such form or forms shall be filed within the time prescribed in § 325.3. Under these circumstances, the word "employee", as used in this part, shall include the individual or individuals by or in behalf of whom the form is filed.

**§ 325.6 Verification procedures.**

The Board's procedures for adjudicating and processing applications and claims for unemployment benefits filed pursuant to this part will include both pre-payment and post-payment procedures for verifying the validity of such applications and claims. Such procedures shall be designed with a view to obtaining substantial evidence as to the days of unemployment of the employees who register in accordance with this part. The verification procedures shall include, but are not limited to:

- (a) Pre-payment contacts with railroad employers, utilizing data processing techniques to the extent feasible so as not to delay unduly the payment of valid claims; and
- (b) Computer matching programs with state agencies or other entities that may have relevant data concerning non-railroad employment and benefit payments under state unemployment compensation laws.

**PART 327—AVAILABLE FOR WORK**

Sec.

327.1 Introduction.

327.5 Meaning of "available for work".

327.10 Consideration of availability.

327.15 Reasonable efforts to obtain work.

AUTHORITY: 45 U.S.C. 362(i), 362(l).

**§ 327.1 Introduction.**

The Railroad Unemployment Insurance Act provides for the payment of unemployment benefits to qualified railroad employees for days of unemployment. Under section 1(k) of the Act, an unemployed employee must be "available for work" as a condition of

eligibility for unemployment benefits for any day claimed as a day of unemployment. This part defines the phrase "available for work" and explains how the Board will apply that phrase to claims for unemployment benefits.

[55 FR 1811, Jan. 19, 1990]

**§ 327.5 Meaning of "available for work".**

(a) *General definition.* A claimant for unemployment benefits is available for work if he is willing and ready to work.

(b) *Willing to work.* A claimant is willing to work if he is willing to accept and perform for hire such work as is reasonably appropriate to his circumstances in view of factors such as:

- (1) The current practices recognized by management and labor with respect to such work;
- (2) The degree of risk involved to the claimant's health, safety, and morals;
- (3) His physical fitness and prior training;
- (4) His experience and prior earnings;
- (5) His length of unemployment and prospects for obtaining work; and
- (6) The distance of the work from his residence and from his most recent work.

(c) *Ready to work.* A claimant is ready to work if he:

- (1) Is in a position to receive notice of work which he is willing to accept and perform, and
- (2) Is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

[Board Order 53-296, 18 FR 8157, Dec. 12, 1953]

**§ 327.10 Consideration of availability.**

(a) *Initial proof.* A claimant who registers for unemployment benefits in accordance with the provisions of part 325 of this chapter shall, absent any evidence to the contrary, initially be considered available for work. Evidence that a claimant may not be available for work shall include any evidence provided by the claimant's base year employer(s) pursuant to section 5(b) of the Railroad Unemployment Insurance Act.

(b) *Information indicating unavailability.* If the office of the Board which is adjudicating a claimant's claims for